

**No: PD-0848-20**

**TO THE COURT OF CRIMINAL APPEALS  
OF THE STATE OF TEXAS**

FILED  
COURT OF CRIMINAL APPEALS  
6/2/2021  
DEANA WILLIAMSON, CLERK

**STOYAN K. ANASTASSOV,  
Appellant**

**v.**

**THE STATE OF TEXAS,**

**Appeal from Dallas County  
No. 05-19-00397-CR**

**\*\*\*\*\***

**Appellant's BRIEF ON THE MERITS  
on State's Petition for Discretionary Review**

**\*\*\*\*\***

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**v.**

**THE STATE OF TEXAS,**

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**Appellant's BRIEF ON THE MERITS  
on State's Petition for Discretionary Review**

**TO THEN HONORABLE JUDGES OF THE COURT OF CRIMINAL  
APPEALS:**

**Summary of Argument**

The jury assessed a \$10,000 fine against Appellant in each of two cases that were tried together. The trial court ordered the sentences to run concurrently. Appellant was only responsible for paying one fine of \$10,000.



1. The court of appeals order reforming the judgment to delete the costs of court is required by Texas Code of Criminal Procedure Art. 102.073.
2. The court of appeals order reforming the judgment as to the fine is permitted as a reasonable protection of the actual sentence rendered in the case.

### **Facts Below:**

#### **Trial Court**

After finding Appellant Anastassov guilty for two separate incidents of indecency with a child, the jury assessed a sentence of nine years imprisonment and a fine of \$10,000 in one case and a sentence of three years imprisonment and a fine of \$10,000 in the second case. The judgment for the second case states “THIS SENTENCE SHALL RUN: CONCURRENT.” (R 272). Two paragraphs later the Judgment reflects a fine of \$10,000.00 and Court Costs of \$599.00. (R 272).

Under the Punishment Options section of the judgment, it states:

“Confinement in State Jail or Institutional Division. The Court ORDERS the authorized agent of the State of Texas or the County Sheriff to take and deliver Defendant to the Director of the Correctional Institutions Division, TDCJ, for placement in confinement in accordance with this judgment. The Court ORDERS Defendant remanded to the custody of the County Sheriff until the Sheriff can obey the directions of this paragraph. Upon release from

confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the **District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fine, court costs, and restitution due.**” (R 273) (Emphasis added)

The Bill of Costs included in the Record on Appeal includes numerous fees and the \$10,000.00 fine for a total of \$10,574.00. (R 298). The Criminal Court Fee Docket includes the fine and shows the balance to be \$10,599. (R 302)

### **Court of Appeals Decision:**

In an unpublished memorandum opinion filed August 14, 2020 the Court of Appeals for the Fifth District of Texas affirmed the convictions. The opinion included an additional issue not raised by the parties.

#### *“Additional Issue Regarding Concurrent Fine and Duplicative Costs*

While neither side raises this issue, we also note that the judgments imposed identical fines of \$10,000 and identical court costs of \$599, which, as we explain below, constituted an illegal sentence in Case No. F-1550350-V because it was inconsistent with various statutes governing multiple offenses tried together in a single proceeding.

‘A trial or appellate court which otherwise has jurisdiction over a criminal conviction may always notice and correct an illegal sentence.’ Mizell v. State, 119 S.W.3d 804, 806 (Tex. Crim. App.

2003) (en banc) (‘There has never been anything in Texas law that prevents any court with jurisdiction over a criminal case from noticing and correcting an illegal sentence.’) (emphasis in original). Thus, we modify the judgment in Case No. F-1550350-V to ensure compliance with applicable law.

Section 3.03 of the penal code provides, in part:

(a) When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which he has been found guilty shall be pronounced. Except as provided by Subsection (b), the sentences shall run concurrently.

(b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

. . . .

(2) an offense:

(A) . . . under Section . . . 21.11 . . . committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section . . . .

TEX. PENAL CODE § 3.03. Here, while section 3.03(b)(2)(A) would have allowed appellant’s sentences to run consecutively had the court made that determination, the statute does not require it, and the trial court indicated that appellant’s sentences would run concurrently.

Section 3.03(a)'s concurrent sentences provision “applies to the entire sentence, including fines.” *State v. Crook*, 248 S.W.3d 172, 177 (Tex. Crim. App. 2008). Additionally, ‘[i]n a single criminal action in which a defendant is convicted of two or more offenses or of multiple counts of the same offense, the court may assess each court cost or fee only once against the defendant.’ TEX.CODE CRIM. PROC. art. 102.073(a).

Here, the trial court conducted a single proceeding for multiple offenses alleged to have been committed on or about December 24, 2011, and the trial court entered judgments in 2019 which imposed \$10,000 fines and \$599 in court costs in both cases. Because the sentences run concurrently and involve multiple offenses tried together in a single proceeding, the trial court could not assess multiple fines or duplicate costs in the two judgments. See TEX. PENAL CODE § 3.03(a); TEX.CODE CRIM. PROC. art. 102.073(a). Accordingly, we modify the judgment in Case No. F-1550350-V by deleting the \$10,000 fine and the \$599 in court costs. See TEX. PENAL CODE § 3.03(a); TEX. CODE CRIM. PROC. art. 102.073(a); TEX. R. APP. P. 43.2(b); *Bigley*, 865 S.W.2d at 27–28, 31; *Asberry*, 813 S.W.2d at 529–30.

\* \* \*

2) the judgment in Case No. F-1550350-V is modified to delete the \$10,000 fine and the \$599 in court costs imposed on appellant, as those are concurrent with the fine or duplicate the costs imposed in Case No. F-1550349-V.”

(Slip opinion at pp. 23-25)

### **State’s Petition for Discretionary Review**

The State’s Petition for Discretionary Review raised the issue as

“Should concurrent fines be discharged concurrently like concurrent terms of confinement?”

### **ARGUMENT**

The court of appeals’ striking of the \$10,000 fine in Case No. F15-50350-V conflicts with the general principles of concurrent sentencing, wrongly eliminates part of a lawfully imposed sentence, and could result in the unjust discharge of the \$10,000 fine altogether.” State Pet. p. 3

### **State’s Brief**

The State summarized her argument:

“Concurrent terms of confinement are served at the same time. Concurrent fines also discharge in tandem when imposed under TEX.

PENAL CODE § 3.03. Therefore, the lower court erred to view the two concurrent fines as being impermissible and then striking the second lawfully imposed fine from the judgment in Case No. F15-50350-V.” State’s Brief, p. 3

## **Statutes Involved**

### **Texas Penal Code**

#### **§ 3.03. Sentences for Offenses Arising out Of Same Criminal Episode**

(a) When the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which he has been found guilty shall be pronounced. Except as provided by Subsection (b), the sentences shall run concurrently.

(b) If the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences may run concurrently or consecutively if each sentence is for a conviction of:

\* \* \*

(2) an offense:

(A) under Section 33.021 or an offense under Section 21.02, 21.11, 22.011, 22.021, 25.02, or 43.25 committed against a victim younger than 17 years of age at the time of the commission of the offense regardless of whether the accused is convicted of violations of the same section more than once or is convicted of violations of more than one section; or

was reached in a case in which the accused was charged with more than one offense listed in Paragraph (A), regardless of whether the accused is charged with violations of the same section more than once or is charged with violations of both sections;

Tex. Pen. Code § 3.03

## **Texas Code of Criminal Procedure**

### **Article 42.08. Cumulative or Concurrent Sentence**

(a) When the same defendant has been convicted in two or more cases, judgment and sentence shall be pronounced in each case in the same manner as if there had been but one conviction. Except as provided by Subsections (b) and (c) , in the discretion of the court, the judgment in the second and subsequent convictions may either be that the sentence imposed or suspended shall begin when the judgment and the sentence imposed or suspended in the preceding conviction has ceased to operate, or that the sentence imposed or suspended shall run concurrently with the other case or cases, and sentence and execution shall be accordingly; provided, however, that the cumulative total of suspended sentences in felony cases shall not exceed 10 years, and the cumulative total of suspended sentences in misdemeanor cases shall not exceed the maximum period of confinement in jail applicable to the misdemeanor offenses, though in no event more than three years, including extensions of periods of community supervision under Article 42A.752(a)(2) , if none of the offenses are offenses under Chapter 49, Penal Code, or four years, including extensions, if any of the offenses are offenses under Chapter 49, Penal Code.

Tex. Code Crim. Proc. § 42.08

Article 43.01. Discharging Judgment for Fine

(a) When the sentence against an individual defendant is for fine and costs, he shall be discharged from the same:

- (1) when the amount thereof has been fully paid;
- (2) when remitted by the proper authority;
- (3) when he has remained in custody for the time required by law to satisfy the amount thereof; or
- (4) when the defendant has discharged the amount of fines and costs in any other manner permitted by this code.

(b) When the sentence against a defendant corporation or association is for fine and costs, it shall be discharged from same:

- (1) when the amount thereof has been fully paid;
- (2) when the execution against the corporation or association has been fully satisfied; or
- (3) when the judgment has been fully satisfied in any other manner.

Tex. Code of Crim. Proc. § 43.01

Article 102.073. Assessment of Court Costs and Fees in a Single Criminal Action

(a) In a single criminal action in which a defendant is convicted of two or more offenses or of multiple counts of the same offense, the court may assess each court cost or fee only once against the defendant.



(b) In a criminal action described by Subsection (a), each court cost or fee the amount of which is determined according to the category of offense must be assessed using the highest category of offense that is possible based on the defendant's convictions.

(c) This article does not apply to a single criminal action alleging only the commission of two or more offenses punishable by fine only.

Tex. Code Crim. Proc. § 102.073

## **Appellant's Argument**

Appellant agrees with the State that fines and confinement are part of an offender's sentence and are punitive in nature. State's Brief, p. 3. In addition to the authority cited in the State's Brief, Appellant would note Armstrong v. State, 340 S.W.3d 759, 767 (Tex.Crim.App. 2011) (citing Weir v. State, 278 S.W.3d 364, 366 (Tex.Crim.App. 2009)) ( "Fines are punitive and are intended to be part of the convicted defendant's sentence as they are imposed pursuant to Chapter 12 of the Penal Code, which is entitled 'Punishments.'"). *See also* Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 265, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989) where the United States Supreme Court stated "at the time of the drafting and ratification of the [Eighth] Amendment, the word 'fine' was understood to mean a payment to a sovereign as punishment for some offense." (footnote citing numerous sources omitted)

## Costs of Court

At least a portion of the court of appeals order should stand. The order referred to both fine and court costs. Article 102.073(a) of the Code of Criminal Procedure specifically states: “In a single criminal action in which a defendant is convicted of two or more offenses or of multiple counts of the same offense, the **court may assess each court cost or fee only once against the defendant.**” Tex. Code Crim. Proc. § 102.073 (Emphasis supplied). Here the plain words of the statute leave no ambiguity as to the action the courts must take. In one of the two cases there can be no fees or court costs. As noted in the State’s Brief at footnote 8, “Term of confinement for two or more concurrent terms is calculated by using the longest term imposed by the convicting court. TEX. GOV’T CODE § 498.001(2)(C), ...”. State Brief, p. 6. In this case the conviction in trial cause number F-15-50349-V (9 years) is the longest term. That conviction also includes the fine of \$10,000.00 and costs of \$599.00. (F-15-50349 CR-270). Thus, the trial court could not assess any costs or fees in the second conviction since the fees and costs could only be assessed “once.”

In this case the Judgment states: “Upon release from confinement, the Court **ORDERS** Defendant to proceed without unnecessary delay to the **District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fine, court costs, and restitution**

**due.”** (R 273) (Emphasis added). The district clerk also included the costs and fees in the “Bill of Costs” in the Record on Appeal (R 298). The “Criminal Court Fee Docket” includes the fine and shows the balance to be \$10,599. (R 302). Neither the Judgment nor the Bill of Costs nor the Criminal Court Fee Docket should have included any fees or court costs. As noted by the Court of Appeals opinion below, an appellate court has the right to reform an illegal sentence. See generally Mizell v. State, 119 S.W.3d 804, 806 (Tex.Crim.App. 2003) (“A trial or appellate court which otherwise has jurisdiction over a criminal conviction may always notice and correct an illegal sentence.”).

Errors occurring after the formal sentencing do not have to be preserved by an objection at the trial court. Landers v. State. See 402 S.W.3d 252, 255 (Tex.Crim.App. 2013)(Because the appellant was not given the opportunity to object in open court to the imposition of attorney pro tem fees as court costs and was not required to file a motion for new trial to complain of that action, she did not forfeit her complaint by raising it for the first time on appeal). *See also* London v. State, 490 S.W.3d 503, 507 (Tex.Crim.App. 2016) where this Court stated:

“However, we have consistently held in the context of court-cost challenges that an appellant may not be faulted for failing to object when he or she was simply not given the opportunity to do so. *Johnson v. State*, 423 S.W.3d 385, 390-91 (Tex.Crim.App. 2014); *Landers v. State*, 402 S.W.3d 252, 255 (Tex.Crim.App. 2013); *Wiley*

*v. State*, 410 S.W.3d 313, 321 (Tex.Crim.App. 2013). As we explained in *Johnson*, an appellant may generally challenge the imposition of even mandatory court costs for the first time on direct appeal when those costs are not imposed in open court and the judgment does not contain an itemization of the imposed court costs. *Johnson*, 423 S.W.3d at 390-91. We noted in *Riles v. State* that procedural default is premised on both an appellant's knowledge of and failure to challenge an issue. 452 S.W.3d 333, 337 (Tex.Crim.App. 2015). And enforcing a procedural-default rule against a defendant who had no opportunity to raise an objection in the trial court does not further any of the policies delineated in *Gillenwaters*. If this case were simply about whether Appellant was required to object to the imposition of court costs when the trial court pronounced sentence, it would be easily decided in Appellant's favor.”

The issue was recognized in Williams v. State, 495 S.W.3d 583, 590 (Tex. App.—Houston [1st Dist.] 2016, pet. dism’d as improv. granted) where the Houston 1<sup>st</sup> Court of Appeals stated:

Consistent with article 102.073, where a defendant is convicted of two or more offenses or of multiple counts of the same offense in a single criminal action, and the convictions are the same category of offense and the costs are all the same, we hold that the court costs should be based on the lowest cause number. Accordingly, the costs enumerated above totaling \$264 should be assessed in cause number 1387897. We further modify the judgments in cause numbers 1387898 and 1387899 to delete these costs. See TEX. R. APP. P. 43.2(b) (“ The court of appeals may: ... (b) modify the trial court’s judgment and affirm it as modified” )

In Cates v. State, 402 S.W.3d 250, 252 (Tex.Crim.App. 2013) this Court held if the trial court improperly included amounts in assessed court costs, that

proper remedy was to reform judgment to delete improper fees. *See also* Hurlburt v. State, 506 S.W.3d 199 (Tex.App.-Waco 2016, no pet.) (judgments modified to delete costs assessed multiple convictions occurring in one proceeding), Robinson v. State, 514 S.W.3d 816, 827-828 (Tex.App.-Houston [1st Dist.] 2017, pet. ref.)(same, citing *Williams* and *Cates*) and Zarate v. State, 551 S.W.3d 261 (Tex.App.—San Antonio 2018, pet. ref.)(same, citing *Williams*).

## **Fine**

The State argues “[w]hen a judgment states that the sentences will run concurrently, it should be understood to include terms of confinement and any fines.” State’s Brief at p. 10 The state footnoted the above sentence:

Fn 13 Once the rule of law is clear, there should be no need for courts to separately specify that the fines are concurrent so that their discharge instructions are clear. See, e.g., *Alexander v. State*, Nos. 03-16-00074-CR & 03-16-00075-CR, 2016 WL 5363735, at \*1 (Tex. App. Austin—Sept. 22, 2016, pet ref’d) (not designated for publication) (to avoid the possibility of double billing, the court modified the judgments to specifically state that the fines run concurrently); *Abraham v. State*, Nos. 04-13-00180-CR, 04-13-00181-CR, & 04-13-00182-CR, 2014 WL 2917378, at \*2 (Tex. App.—San Antonio June 25, 2014, no pet.) (not designated for publication) (reformed judgments to show that the fines are to run concurrently).

The apparent conclusion from the statement is that if the judgment states the sentence is to run “concurrent”, everybody will know it is not to be served.

Obviously in this case the trial court and the district clerk did not know since the “concurrent” fine was ordered to be paid in part of the same judgment as the order that it was concurrent. Here, in addition to ordering the judgment to be concurrent, the trial court also stated: “Upon release from confinement, the Court **ORDERS Defendant** to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, **to pay** or to make arrangements to pay **any fine**, court costs, and restitution due.” (R 273) (Emphasis added). The District Clerk also included the fine in the Bill of Costs and the Criminal Court Fee Docket. (R- 298 and 302)

The courts of appeals have reformed judgments from time to time to ensure the prison authorities understood the fines were not stacked. In Aldana v. State, No. 08-13-00243-CR, 2015 WL 2344023, at \*2 (Tex.App.--El Paso May 14, 2015, pet. ref (not designated for publication)) the judgment was modified to delete fines in two of three convictions “to ensure prison officials understood fines were concurrent.” In Habib v. State, 431 S.W.3d 737 (Tex.App.-Amarillo 2014, pet. refused) the court stated: “When sentences are ordered to run concurrently, the judgment should not reflect a cumulated fine” citing Wilson v. State, No. 07-11-00019-CR, 2012 Tex.App. LEXIS 525, at \*2 (Tex. App.--Amarillo Jan. 24, 2012,

no pet.) (per curium) (mem. op., not designated for publication) which cited State v. Crook, 248 S.W.3d 172, 177 (Tex. Crim. App. 2008). In Williams v. State, 495 S.W.3d 583, 590-91 (Tex. App.—Houston [1st Dist.] 2016, pet. dismiss'd as improvidently granted), the court of appeals stated:

“A bill of cost must be in writing and contain ‘the items of cost.’ TEX. CRIM. PROC. CODE ANN. art. 103.001 (West Supp. 2015). As noted above, fines are fundamentally different than court costs. Fines constitute punishment and are part of the defendant’s sentence whereas court costs are those financial obligations intended to recoup “the costs of judicial resources expended in connection with the trial of the case.” Weir v. State, 278 S.W.3d 364, 366-67 (Tex.Crim.App. 2009). In light of the above, we reform the judgments to delete the fine from the bills of cost. Appellant remains obligated to pay the \$10,000 fine reflected in the judgment of conviction in cause number 1387897. See TEX. R. APP. P. 43.2(b).”

The above cases are the decisions the State wants this court to disavow. State’s Brief, p. 10, footnote 14. It should be noted that a court of appeals also reformed the judgment to make sure the incarcerated person gets the full force of the punishment. See Bledsoe v. State, 479 S.W.3d 491, 498 (Tex.App.-Fort Worth 2015)(pet. ref)(judgment reformed to ensure prison officials would correctly compute appellant not eligible for early release on parole).

Appellant’s convictions have been affirmed by the court of appeals and this Court, so there is little likelihood that the fine in this case will ever be paid. If the primary conviction was reversed, it would most likely be remanded for a new trial,

not dismissal. In other words, there is almost no chance the Appellant will get a free ride. There is a greater chance the Appellant could run the risk that some official may seek to have him pay this fine after the first fine has been paid.

Compare Wiedenfeld v. State, 450 S.W.3d 905, 907-908 (Tex.App.-San Antonio 2014, no pet.) where the trial court orally announced the \$1,000.00 fines would run concurrently but the judgment imposed a fine of \$2,000.00. The San Antonio court of appeals stated:

“We hold the nunc pro tunc judgment must be modified to reflect the imposition of a \$1,000.00 fine. Moreover, the trial court must also amend its withdrawal notification directing the Texas Department of Criminal Justice--Institutional Division to reflect withdrawals commensurate with the modified judgment.”

Compare also the situation in Ex parte Vela, 460 S.W.3d 610 (Tex.Crim.App. 2015) where a prisoner had to go through the writ process to get relief from an improper “stacking” of sentences by the prison authorities. Appellant contends that the court of appeals order striking the fine in this case protects the convicted person from mistaken attempts by the State officials to collect an illegal fine.

There is also the risk that the limited language suggested by the State that everybody would know the results could lead to fraud against the convicted person. The Federal Trade Commission stated on March 5, 2021 that in “[i]n 2020, people reported losing more than \$174 million to government imposter scams, with a



median loss of \$1,250.<sup>1</sup> Incomplete or misleading language in judgments can lead to fraudulent attempts to collect illegal fines. In this case the Bill of Costs or the Criminal Court Fee Docket and a portion of the Judgment all indicate that Appellant will have to pay the fine (and costs) after release from prison.

In effect what the State is arguing is that *concurrent* means both fines remain in effect, but the State can't enforce collecting the second fine. What this Court said in State v. Crook, 248 S.W. 3d 172 (Tex. Crim. App. App. 2008) and the court of appeals below and other courts of appeals have said was the State can only collect \$10,000 in one case. The state is not arguing that Appellant must pay \$20,000.00 in fines. The State is just worried on how to do the accounting. Everyone agrees Appellant only has to pay \$10,000.00 total. The court of appeals' solution is the simplest – only the largest fine can be collected. The State's solution is the one with the most possibilities for the convicted to end up paying more than what the court ordered. It is the one most likely to be abused. The person being punished would have legal remedies available, but not every person has the resources, or is aware of the resources to engage in the battle.

If the Court holds that the court of appeals order should be reversed and the fine reinstated, the Court should also require the court of appeals to reform the Judgment by deleting from the Judgment the following: “Upon release from

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<sup>1</sup> <https://www.consumer.ftc.gov/blog/2021/03/when-its-not-really-government-calling===>

confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the District Clerk's office, or any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fine, court costs, and restitution due” and direct the trial court to include language that reflects that no costs are to be assessed and that the fine is not to be collected if the fine is discharged in trial court cause number F-15-50349. The order should also include directions for the district clerk to remove the fine and fees from the Cost of Court and Criminal Court Fee Docket entries. This Court should also direct the Court of Appeals to direct the trial court to include the cause number with which the judgment runs concurrent.

### **Prayer for Relief**

The Appellant prays that the Court of Criminal Appeals conclude that after examining the record and the briefs, the Court dismiss the State’s petition for discretionary review as improvidently granted.

In the alternative, Appellant prays that this Court affirm the Court of Appeals order deleting the \$10,000 fine and \$599 in court costs.

In the alternative, Appellant prays that this Court of Criminal Appeals remand to the Court of Appeals for a more definitive order directing the trial court to delete from the Judgment “Upon release from confinement, the Court ORDERS Defendant to proceed without unnecessary delay to the District Clerk's office, or

any other office designated by the Court or the Court's designee, to pay or to make arrangements to pay any fine, court costs, and restitution due” and direct the trial court to include language that reflects that no costs are to be assessed and that the fine is not to be collected if the fine is discharged in trial court cause number F-15-50349. The order should also include directions for the district clerk to remove the fine and fees from the Cost of Court and Criminal Court Fee Docket entries.

Respectfully submitted,

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## **Certificate of Compliance**

The undersigned certifies that according to WordPerfect word count tool, this document contains 5077 words exclusive of the items excepted by Tex. R. App. P. Rule 9.4(i)(1).

/s/ Ronald L. Goranson  
**Ronald L. Goranson**  
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